

## Message Text

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ORIGIN ARA-20

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FM SECSTATE WASHDC

TO AMEMBASSY LIMA IMMEDIATE

UNCLAS STATE 155604

E.O. 11652: N/A

TAGS: PFOR, CGEN, PE

SUBJ: PRESS REPORTS THAT U.S. HAS GRANTED ASYLUM TO  
PERUVIANS

REF: LIMA 5585 AND 5617

1. AP MAY HAVE BASED ITS STORY ON THE RECENTLY ISSUED  
TRANSCRIPT OF THE HEARING ON WESTERN HEMISPHERE  
IMMIGRATION BEFORE THE HOUSE JUDICIARY COMMITTEE.  
TRANSCRIPT INCLUDES TWO TABLES PROVIDED TO COMMITTEE.  
FIRST TABLE SHOWS ASYLUM REQUESTS WHICH IMMIGRATION AND  
NATURALIZATION SERVICE (INS) REFERRED TO THE DEPART-  
MENT'S OFFICE OF REFUGEES AND MIGRATION FOR AN ADVISORY  
OPINION IN CY 1971, CY 1972 AND FOR THE FIRST THREE  
MONTHS OF 1973. FIGURES SHOWN FOR PERU ARE 18 REQUESTS  
IN 1971, 50 IN 1972 AND 9 IN FIRST THREE MONTHS OF 1973.  
ACCORDING TO DEPARTMENT RECORDS, WE DID NOT REPEAT NOT  
RECOMMEND ASYLUM IN ANY OF THOSE CASES. HOWEVER,  
DEPARTMENT RECOMMENDED THAT ONE FAMILY WHOSE IMMIGRANT  
VISA APPLICATION FAIRLY WELL ADVANCED BE ALLOWED TO  
REMAIN IN THE U.S. UNTIL THEY WERE READY FOR FINAL  
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INTERVIEWS.

2. SECOND TABLE SHOWS CUMULATIVE TOTAL OF ALIENS GRANTED ASYLUM FROM BEGINNING CY 1971 THROUGH MARCH 31, 1973. THIS TABLE SHOWS THAT 47 PERUVIANS GRANTED ASYLUM. HOWEVER, INS ADVISES DEPARTMENT THESE ARE VOLUNTARY DEPARTURE CASES (SEC 242 OF THE IMMIGRATION AND NATIONALITY ACT) AND NOT REPEAT NOT ASYLUM CASES. INS LISTED THEM AS ASYLUM CASES BECAUSE THERE WAS NO OTHER ADMINISTRATIVE CATEGORY TO DESCRIBE THEM. INS FURTHER STATES THAT THESE VOLUNTARY DEPARTURE CASES GO BACK TO EARLY 1971 IMMEDIATELY FOLLOWING KUDIRKA CASE IN WHICH THIS INDIVIDUAL WAS RETURNED TO A SOVIET VESSEL AFTER SEEKING REMAIN ABOARD U.S. COAST GUARD VESSEL. AT THAT TIME INS REFLECTED GENERAL USG SENSITIVITY OVER ASYLUM REQUESTS AND GRANTED VOLUNTARY DEPARTURE STATUS TO A SUBSTANTIAL NUMBER OF ALIENS FROM MANY DIFFERENT COUNTRIES WHO CLAIMED POSSIBLE REPRISALS IF THEY RETURNED TO THEIR NATIVE LANDS. VOLUNTARY DEPARTURE STATUS USUALLY GRANTED IN INCREMENTS OF ONE YEAR AND REVIEWED YEARLY. STATISTICS FOR VOLUNTARY DEPARTURE CONSTANTLY VARY AS ALIENS LEAVE THE U.S., BECOME ELIGIBLE FOR IMMIGRANT VISAS OR ADJUST STATUS TO NON-IMMIGRANT CATEGORY (E.G. STUDENT). ALIENS ALSO REMOVED FROM VOLUNTARY DEPARTURE LIST DURING INS REVIEW OF THEIR CASES AS YEARLY VOLUNTARY DEPARTURE PERIOD ENDS. THEREFORE, MARCH 31 FIGURE OF 47 REDUCED TO 29 AS OF JULY 1973. TO RECAPITULATE, ASYLUM NOT REPEAT NOT GRANTED TO ANY PERUVIANS DURING PERIOD COVERED IN STATISTICS INCLUDED IN TRANSCRIPT OF HEARING BEFORE HOUSE JUDICIARY COMMITTEE. ASYLUM PROCEDURE WAS NOT IN USE PRIOR TO 1971 AND KUDIRKA CASE. THEREFORE, STATISTICS AVAILABLE FOR PERIOD PRIOR THAT TIME DO NOT, WITHOUT INORDINATE AMOUNT OF EFFORT AND RESEARCH, ALLOW US TO PROVIDE ASYLUM DATA PRIOR TO 1971.

3. UNDER PRESENT ASYLUM PROCEDURES INS HAS JURISDICTION ON ASYLUM REQUESTS MADE BY ALIENS IN THE UNITED STATES. INS DISTRICT DIRECTOR HAS AUTHORITY TO GRANT ASYLUM WITHOUT REFERENCE TO DEPARTMENT OF STATE OR INS WASHINGTON. IN DOUBTFUL CASES OR IN CASES IN WHICH

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DENIAL CONTEMPLATED, DEPARTMENT'S ADVISORY OPINION REQUESTED. DEPARTMENT MAY REQUEST EMBASSY COMMENTS AS APPROPRIATE. ONCE INS HAS DEPARTMENT'S RECOMMENDATIONS, APPROPRIATE ACTION CAN BE TAKEN. EACH CASE IS HANDLED STRICTLY ON ITS OWN MERITS.

4. US ASYLUM POLICY IS CONSONANT WITH ITS OBLIGATIONS UNDER THE PROTOCOL RELATING TO THE STATUS OF REFUGEES

OF 1967 TO WHICH US IS SIGNATORY. PROTOCOL INCORPORATED SUBSTANTIVE PROVISIONS OF CONVENTION RELATING TO STATUS OF REFUGEES OF 1951 TO WHICH PERU IS SIGNATORY. INHERENT IN BOTH DOCUMENTS IS REQUIREMENT THAT DETERMINATIONS OF REFUGEE STATUS SHOULD BE MADE ON HUMANITARIAN BASIS WITHOUT REFERENCE TO POLITICAL AND FOREIGN POLICY CONSIDERATIONS. TWO PERTINENT PROVISIONS OF CONVENTION ARE: (A) ARTICLE 1 THAT DEFINES A REFUGEE AS A PERSON WHO "OWING TO A WELL-FOUNDED FEAR OF BEING PERSECUTED FOR REASONS OF RACE, RELIGION, NATIONALITY, MEMBERSHIP OF A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION, IS OUTSIDE THE COUNTRY OF HIS NATIONALITY AND IS UNABLE, OR OWING TO SUCH FEAR IS UNWILLING TO AVAIL HIMSELF OF THE PROTECTION OF THAT COUNTRY." (B) ARTICLE 33 THAT PROHIBITS THE RETURN OF A REFUGEE TO "A COUNTRY WHERE HIS LIFE OR FREEDOM WOULD BE THREATENED ON ACCOUNT OF HIS RACE, RELIGION, NATIONALITY, MEMBERSHIP OF A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION."

5. EMBASSY CAN USE ABOVE INFORMATION AS REQUIRED. IN DISCUSSING EXPRESO STORY, CARE SHOULD BE TAKEN TO STRESS INDIVIDUAL NATURE EACH ASYLUM CASE, NON-POLITICAL AND HUMANITARIAN NATURE OF ASYLUM POLICY AS WELL AS NEED TO OBSERVE INTERNATIONAL COMMITMENTS SET FORTH IN PROTOCOL AND CONVENTION.

6. FOREGOING HAS BEEN PASSED TO PERUVIAN EMBASSY. ROGERS

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